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Mass. vs D.L. Child, for Publishing a Libel  
on Hon. John Keyes . 1829

LS  
13570  
7.7

HARVARD COLLEGE  
LIBRARY



FROM THE  
WINSLOW LEWIS  
COLLECTION OF TRACTS



The Gift of  
MRS. F. L. GAY

April 4, 1917

[FROM THE CONCORD (MIDDLESEX) GAZETTE.]

# **REVIEW,**

OF THE REPORT OF THE

**CASE OF THE COMMONWEALTH**

*versus*

**DAVID LEE CHILD,**

**FOR**

**PUBLISHING IN THE MASSACHUSETTS JOURNAL**

## **A LIBEL**

**ON THE**

**HONORABLE JOHN KEYES.**

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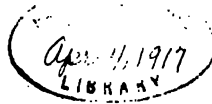
**Boston :**

**J. H. EASTBURN.....PRINTER.....CONGRESS STREET.**

.....  
**1829.**

W 3 13570.7.7

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Windsor Lewis tract to  
Mrs. F. L. Tracy

W

## REVIEW.



This is a trial for a political libel. It is said to be well reported, and possesses an interest both in relation to matters of *fact* and *principle*, which deeply concerns the welfare of the People, and of the Republic; and which, we venture to predict, will have an important influence, long after the parties, witnesses, jurors, and even the Judge *shall cease to be*.

The Defendant was the conductor of a public journal or newspaper. The Prosecutor was a Senator, claiming a reelection by the people. The publication or supposed libel, was an electioneering piece, addressed to the Electors, disclosing matters of fact and opinion, in relation to the official conduct of the Candidate.

We feel bound to invite the attention of the whole people to the trial. It should be read, considered, reflected upon, and *acted upon*. It should not be cursorily and carelessly perused and thrown aside, with the political pamphlets and "rubbish" of the day. There is more here than, at first, meets the eye or the mind.

The opening address of Mr. Gardiner to the Jury, cannot be read without profit. It is a lucid, discriminating and manly discussion, setting forth, in a style of great plainness, and precision, the rights of the people, and the duty of servants—the motives of the parties, and their respective obligations and duties—the liberty of the Press, as connected with the law of libel—the history of that law in England and its application there to literary and political libels—its history in the United States, and particularly in Pennsylvania, New York and Massachusetts, until the passage, in the latter, of the Stat. of 1826, Ch. 107. Commenting upon this act, Mr. Gardiner says:—

"This statute it will be observed relates to all prosecutions for libel, *civil* as well as *criminal*. It declares that the truth may always be given in evidence. But it does not follow that it is *indispensable*; or that the publisher must be *necessarily* convicted in a *criminal* prosecution, if he fail to prove the truth of his publication. It is not always possible to arrive with certainty at the truth of official misdemeanors. But, are not the people to inquire? Is not the subject to be freely discussed? And is an editor to be held *criminally* liable, for informing the people of any supposed misconduct in their public agents, *which he truly believes, and has reasonable grounds to believe?* This certainly would be inconsistent with the very end of our government."—p. 25.

"At common law, malice is the essence of the offence. To constitute crime there must be a criminal intent." \* \* \*

"To constitute a libel,' says Lord Kenyon, who was one of the most learned of the English judges, 'the mind must be in fault, and show a malicious intention to defame;' [King *vs.* Abington. 1 Esp. 226.]—"if published inadvertently it would be a libel.' And so more recently, says Lord Ellenborough;—"Though that which is written may be injurious to the character of the party, yet if it be done *bona fide*, as with the view of investigating a fact, in which the party making it is interested, it is not libellous.' [Delany *vs.* Jones, 4 Esp. 191.] 'The mischief of the English law is, that malice is held to be a necessary inference from the mere act of voluntary publication. Whereas that is at most but one symptom of malice; and whether the act were criminal or not is to be judged of, *as in other cases*, by all the circumstances. It was always the law in England, as well as in this country, that without malice there is no libel. Whether the matter published be true or not, they hold to be wholly immaterial. We have amended the English law, by declaring that the truth may be shown as one circumstance from which the jury are to judge. But it is not here, any more than there, a justification, unless published from good motives and for justifiable ends. And if the matter published be untrue, still if published from good motives, and for justifiable ends, it is not a *criminal* libel here certainly; for it would not be so there; and we have not altered the law in this particular."—pp. 25, 26.

"The distinction which I contend for as one of common law is this; that whenever a man publishes, with an honest intent, that which he believes to be true, to those only who have an interest to know the fact, or to be put upon inquiry, *this is no criminal libel*, although the information communicated should turn out to be untrue."—p. 26.

Now all this we take to be sound reason and sound law. The party in such case, may be held to answer *civiliter* but not *criminaliter*. Again:—

"That such was always the law here, especially in regard to free discussion of the character of candidates for office, appears from the case of the Commonwealth *vs.* Clapp." \* \* \*

\* \* \* "The principle contended for is, however, admitted to its full extent when it is judicially holden, that all matters of complaint or investigation respecting official delinquency, may be made to the constituted body, whose duty it is to inquire and redress the grievance; and that the party preferring the complaint, or moving the investigation from honest motives, shall not be held to answer for a libel although the matter charged should be false. And this point has been abundantly settled *both here and in England*."—p. 27.

After quoting sundry adjudged cases, Mr. Gardiner proceeds:—

“Upon the analogy of these cases we contend, that no *criminal* prosecution can be maintained in this country for a political libel, against a candidate for office by popular election, founded on a publication honestly complaining to the people of his supposed ill conduct in office, and mismanagement of public affairs, even although the subject matter of the complaint, honestly believed, upon probable grounds, should turn out to be entirely erroneous. For the people are the only legitimate tribunal, recognized by our political institutions, before whom such a complaint can be justly preferred, and honest error in the ground of complaint, however injurious its consequences, is certainly no crime.”

“If these views are not wholly erroneous, the result is, that we have in this country a definition of the freedom of the press, adapted to our political institution.” \* \* \* \* “It is substantially the same definition which was given by Alex. Hamilton” [clarum et venerabile nomen] “in the case of the *People vs. Crosswell*, extended only so far as to include cases of honest error in estimating the character and qualifications of the representatives of the people. It is ‘the right to publish the truth of any person; and to publish concerning the official conduct of an elective officer, who is a candidate for the votes of the people, whatever the publisher honestly believes, and has reasonable grounds to believe; provided, in either case, that the publication be from good motives, and for justifiable ends.’ And hence it follows that the true definition of a libel is ‘a written publication injurious to the reputation of an individual, whether in public or private life, made from malicious motives, for a bad purpose or an unjustifiable end.’”—pp. 28, 29.

To the same purpose Mr. Fletcher read from Erskine’s speeches—see printed trial pp. 59, 60, 61 and 62.

Now to all this reasoning, and these authorities, we look in vain through this trial for any replication, or answer on the part of the prosecution, or from the bench. The defence was placed upon two grounds.

1. That the matter alleged was true.
2. That if the matter alleged was not true, it was published without malice, from good motives and justifiable ends, the Defendant having good grounds to believe, and conscientiously believing it to be true.

It is for every man, on reading the testimony, to determine for himself—whether one or both or neither of these points are made out,—*apart from the testimony of Mr. Keyes himself* we think there can hardly be a doubt. Certain facts are undeniably proved, such as,



1. That Mr. Keyes had been Chairman of the Committee on Accounts for four or five years.
2. That the Committee had been ordered by the Legislature to give the printing to the lowest bidder.
3. That there had always been several competitors for the work.
4. That True & Greene had *always* obtained the contract.
5. That the proposals of others were *in fact* lower than those of True & Greene; particularly in 1826—10 per cent lower.
6. That the proposals of Dutton & Wentworth in 1827 were 10 or 1200 dollars lower than True & Greene's.
7. *That True & Greene's bills or charges against the State had been made out in open and general disregard of their contracts with the Committee—and in many instances ALLOWED BY THE COMMITTEE.*
8. That the Commonwealth had consequently sustained a loss of probably some thousands of dollars.

It is remarkable that two of the Committee on Accounts, were called as witnesses by the Defendant, viz :—Mr. Palfray and Mr. Perkins—and two by the Prosecutor, Mr. Ellis and Mr. Robbins.

Mr. Palfray is said to be a man of clear intelligence, unblemished reputation and great purity of character. Nothing appears from his testimony, or throughout the trial, calculated in the slightest degree to affect his credibility—or to give him the character of a *partizan*. The Judge says of him,

“His testimony is certainly important.” \* \* \* “There are circumstances calculated to give weight to his testimony. He was a member of the Committee with Mr. Keyes. He was a printer by trade, and of course more particularly conversant with the subject of the contract;—And what may be more important is—that *he* was particularly charged with this business by the Committee.”—p. 94.

To us this last circumstance seems of immense importance. Because, among other reasons, in a committee consisting of only five, charged with such a mass of business as the Committee on Accounts, the one charged by any particular subject would naturally, nay necessarily, know more about it, than all the rest put together. And Mr. Keyes testifies,—“the business of the committee being arduous, was generally apportioned among the members.”

Mr. Perkins' testimony stands untouched and unimpeached, and, as far as it goes, corroborates that of Mr. Palfray. The testimony of Mr. Ellis we recommend to the readers of this trial—and to the curious as a rare specimen of the zeal of the *partizan*, united with the simplicity of ignorance. It is certainly *unique*.—We entirely agree with Mr. Fletcher, “that it is not in the power of any man to *diminish* it.” Mr Robbins' testimony has

not and ought no have the weight of a straw *against the Defendant*. Four as respectable men, as any in the county of Plymouth swore that he gave them distinctly, separately, *and at the time of the publication of the supposed libel*, a totally different account of the matter from what he gave on the trial—and which account went completely to establish the truth of the publication. If ever a witness was completely *discredited*, it is this same Josiah Robbins. We have been accustomed to proceedings in Courts, and to trials by jury, for twenty five years, and we have never known a witness more utterly overthrown. Taking what he said and wrote, and what is said of him, as it appears in this trial—and we think him a fit subject for an *insane hospital*, if not in a worse place. And yet we observe the judge says to the Jury, speaking of the character of the witnesses :

“They are none of them impeached ; and almost all of them come before you, with evidence of more than ordinary respectability of character, having the testimony of their fellow citizens in their favor from the important offices which they hold.”—p. 93.

We have no acquaintance with the people of Plymouth but we should think they would continue this “testimony” in favor of Mr Robbins no longer.

We cannot resist giving one more extract from this extraordinary charge of the judge, extraordinary we mean, *upon the evidence*.

“In the construction of this conversation,” [that of Robbins with the other members of the committee in session,] “you will consider whether Mr Robbins might not have meant, that he would not, for his own part, *if it were his own case*, take the contract away from the old printers, unless it would make a difference, *meaning to himself*, of more than \$500—to which Mr Keyes assented, saying, ‘nor would I.’”—p. 96.

Among all the shifts and efforts, which Robbins makes upon the stand, to clear himself from the most gross and palpable self contradiction,—it is a pity, he, or the solicitor General for him, in his argument,—had not hit upon the above most ingenious construction.—There is a curious document in the appendix to the trial, showing that this same Robbins “though an administration man, and chairman of the county committee” together with his friends, gave their votes in the election of 1828 for his Honor the Judge for Governor !

Upon the whole we are of opinion, that although the verdict was against Mr Child—yet that Mr Keyes *lost his case*. We believe too that Mr Keyes himself concurs fully in this opinion, for he declined offering himself to the people for re-election ! “He foresaw the evil and hid himself.” In this, at least, he has acted wisely. When a man finds it necessary to support his public character *by his own oath*, it is time for him to abandon popular election !

As it respects the Defendant, we think he deserves well of the Republic—"He has indeed done the State some service." Who can read the testimony of the City Auditor, without being convinced of the gross frauds, committed by the printers of the State, on the one hand and the gross *negligence* to use no stronger term, of the Committee on Accounts, on the other? How can Mr Keyes, who had been chairman of this committee for years—receiving extra pay for his services—ever, again ask the confidence of his fellow citizens?

The following appear to us, to be some of the advantages, which, either already have or will hereafter grow out of this trial:—

1. The law of libel, which Mr Fletcher declares "to be yet in a state of progression"—will be better settled—and become more clear, definite and specified; and consequently the true liberties of the Press—fixed on principles better known and established.

2. The Commonwealth will save some thousands of dollars, because the Committee on Accounts, "those eyes of the Commonwealth" as the Solicitor General called them, will cease to exist. The Commonwealth will exchange "eyes" which have been blind—for those which can see. Some tribunal better adapted to the purpose—must and will be created. The late Legislature have for the *first time* refused to pay this committee for doing bad work.

3. The people will have got rid of some unfaithful servants, and it will be their fault if they are not more vigilant in future.

Amid the love of tranquillity and ease, which pervades the wise and good men of the present day—and holds them back from the strife of Caucuses—and the bustle and dust of Elections, and which leaves an open and free field for the small, bargaining, corrupt politicians, who begin by cheating the people of their votes—and end by robbing them of their money;—it is a cheering, gratifying, encouraging, moral spectacle, to see a man, in the true spirit of disinterested patriotism, walk into the field and strip them of their false disguises—expose their hollow pretensions—lay bare their petty thefts—and exhibit their foul corruptions. True, he must suffer great pecuniary losses,—true, he must lay his account with meeting with much labor—great expense, large abuse, little present praise and less thanks.

In exposing the two great corruptions of the State Prison and the State Printing—the defendant has doubtless expended many hundreds of dollars—endured great labor—and incurred much personal abuse—but let him not be discouraged.—He discharges well, the duty of a faithful sentinel upon the walls of the Republic. Let him persevere:—the public will finally reward him. The people will not—cannot—must not forget him.

The following extracts are made from some of the notices which have been taken of the trial, by *Editors* in various parts of the country. No paper has given an opinion, which differs from these except the *Bunker Hill Aurora*, a press devoted to *Mr. Keyes* and the *exclusives*, and considered by those who know its *printer* and *patrons*, as a *branch* of the *Boston Statesman*; and even that paper did not risk an *editorial* opinion, but inserted the article as "communicated." It was perfectly right and proper for the *printer* to publish the communication; which was merely a *general* denial of the accuracy of the report, of which the above review, and notice have been given; but *sheer justice*, (due from man to man and from *printer* to *printer*,) required that *Mr. Whieldon* of the *Aurora* should have laid before his readers the paragraph of the Defendant requesting that the *author* of the communication or the *printer* of the *Aurora* would state wherein the report was incorrect, and promising either to *correct* in a supplement, or to *support* by the *evidence* of persons attending the trial, every paragraph, sentence or word, which should be called in question by the author or *printer* or by any other person. With this request the *printer* of the *Aurora* and his *correspondent* have prudently declined to comply, and thus the matter rests. The public will draw their own conclusions.

### COMMONWEALTH vs. CHILD.

#### *Extracts from various papers.*

[From the *Yankee* and *B. L. Gazette*.]

Mr. Child has done himself credit in this affair. He behaved as an Editor should behave. Being told that an unjustifiable preference had been proposed by a Senator of Massachusetts in favor of one applicant over another, and being told so by a respectable man, Mr. Child published the fact to the world:—the *fact*, I say, for if the verdict of the jury were not in the way, it would seem difficult to escape the conclusion that the charge was *substantially true*.

[From the *National Ægis*.]

As the prosecutor is now a private\* citizen we forbear expressing any opinion of his guilt or innocence of the charge.

However that may have been, it must be apparent to every candid reader that the defendant was, if mistaken, innocently

mistaken, that he acted under information derived from a most creditable and respectable source, and that if the facts charged were true, it was a duty he owed, not only to Middlesex, but the state, to publish and expose them. Under these circumstances, it becomes a question of grave importance, how far an editor is liable in a *criminal* prosecution for publishing what he honestly believes to be true. But we would not discuss this question at this time. The facts developed by this trial in relation to the management of the *Committee* of the Legislature an *Accoins*, should be known to every constituent, who may be called to elect members of that body. The public are more deeply interested in the doings of that Committee than they may be aware. It seems that most if not all the accounts against the Commonwealth, including pauper accounts, the state printing and various claims for service, pass under the examination of this Committee to be allowed or rejected as they shall think proper.— If therefore this Committee should be remiss in their duty, or unfit to perform it, and most of all, should its members be corrupt, the State is the party to suffer—the people alone feel the consequence in the improper or dishonest application of the funds of the State. We are persuaded that the public, when the trial of Mr. Child shall have been read and understood, will become convinced, of what many have long since believed is the truth, that some change should be made in the financial concerns of the State. We require an experienced and intelligent agent who is competent to audit and examine all accounts. The public will then be ready to create and employ a State Auditor, and the sooner we believe this change is made the better.

[From the Taunton Reporter.]

After stating the facts this paper adds:—Mr. Child at any rate had *good* reasons to *believe* his statement to be true.

[From the Wiscasset (Me.) Citizen.]

We have received the trial of D. L. Child, Esq. Editor of the Massachusetts Journal, for a libel on the Hon. John Keyes. We may not understand the law relative to Libels; but if the publication of Mr. Child was a libel, scarcely a publisher of a newspaper in the country could escape the charge of one. The trial is one of great interest, particularly when we consider the high and excellent character of the defendant. Of the plaintiff we know little, except that he was a member of the Senate of Massachusetts. The probability is, that the publication in question was one of every day report, and that during a party excitement, Mr. Keyes attempted to intimidate or brow-beat Mr. Child into a recantation of the publication, before he had time to ascertain its correctness; thus mistaking most hugely the character of that gentleman.

When Mr. Keyes called on Mr. Child and asked him if he would recant in his next paper, Mr. Child answered "certainly, if I find I have been wrong." Keyes replied—"No, sir, that will not do, *I will not wait so long !*"\* Such language as this evinces a desire for vengeance rather than justice.

The National Intelligencer republishes the article from the Wiscasset Citizen.

[From the Massachusetts Yeoman.]

We have read it, [the Report of the case,] and it will repay any one for perusal, both by the information it will afford in relation to the management of business by the Committee of Accounts in the Legislature, and by the views it presents of the principles of law applicable to the liberty of the Press.

Mr. Child was indicted at the instigation of Mr. Keyes. Without undertaking to question the propriety of the verdict, it may safely be remarked that the evidence shows that Mr. Child had reason to suppose he was publishing only the truth, and such as was important to be made known to the People. We cannot but hope therefore, that he will ultimately go free from a prosecution, to which he has been made liable.

[From the N. Y. Com. Advertiser.]

It appeared on trial that our brother Editor received his information from a more credible channel than we of the craft are always able to resort to for similar intelligence, viz : from a fellow committee man of the Hon. Senator, and in the most explicit manner. Mr. Child however, was convicted of the libel, and that, as it appears, chiefly on the point blank denials of the Senator himself on the stand. We confess such things make us feel melancholy. If we poor editors are to be punished for every free word spoken of a candidate for public offices, in the heat of an electioneering contest, we shall almost despair of the Republic. It will be worse than the old gag law.

[From the Boston Daily Advertiser.]

We take this occasion to remark that the editor of the Journal has been subjected to very serious inconvenience, in this, as well as in another case, for the freedom with which he has discussed, with the most laudable motives, the official conduct of public men. We care not how strictly the publishers of the journals are called to account for any aspersion of the character of individuals, public or private, from a feeling of personal hostility or from mere wantonness and indifference to the injury they do ; but when the character and conduct of public officers,

\* The call was on Tuesday. The next paper would have been issued on Thursday morning, forty hours from the time of the call.

and candidates for office, are discussed, the welfare of the public, and the spirit of our government require that a favourable construction should be put upon the motives of the publisher, and that he should not be punished where there is no appearance of a malicious intention, and where no injury is done, other than what results from the publication of the truth.

In the cases referred to, it is evident that Mr. Child was influenced from no other motives than the desire to discharge his duties faithfully to the public, by making known what he considered material to forming a correct judgment of the conduct of public officers. In the case reported in the pamphlet referred to, the trial exhibited a singular contradiction of testimony under circumstances which seemed to entitle him to the benefit of that version of the transaction, most favorable to his defence. We cannot go into the particulars of the case, but again refer the reader to the report of the trial, which affords some amusing specimens of cross examination.

[From the Columbian Centinel.]

This trial contains information of a public nature, which we deem important. Much of it relates to the manner in which business is transacted in the Committee on Accounts in our Legislature; a committee who audit and settle nearly all the accounts against the Commonwealth amounting to a very large sum annually. We recommend to our readers and fellow-citizens to purchase and peruse the entire report, and we have little doubt that the result will be a conviction that it is time that we had some regular and competent person to audit and allow or reject accounts exhibited against the State.

[From the New England Galaxy.]

The jury, after Mr. Justice Morton had commented upon the testimony, found a verdict against Mr Child.

[From the Newburyport Herald ]]

We have read attentively the report of the evidence and arguments in the trial of David L. Child, esq. Editor of the Massachusetts Journal, for an alleged libel against the honorable John Keyes, and, if they prove a false and malicious publication on the part of the respondent, then have we to say, that we have lost all sense of the distinction between truth and falsehood; we will go back to school, set ourselves on the lowest form and diligently listen to the abecedarians of the art of judging.

A year ago, last March, at a time when Mr. Keyes was up before the people of Middlesex, a candidate for the State Senate, Mr. Child inserted, in his paper, the paragraph which follows:

"In this [referring to a former mention] Committee of Accounts, which had advertised for sealed proposals for the contract of printing, the Hon. Chairman, Mr. Keyes, proposed; before a seal was broken, that the contract should be given to the Boston Statesman, provided that their proposals were not more than five hundred dollars higher than any other.

"This was no more nor less than a proposal to give \$500 from the Treasury of Massachusetts to that reprobated Jackson press."

This fact, Mr. Child affirmed, was communicated to him by Mr. Palfray, a member of the Committee. On application to that gentleman; he said in a written communication, that Mr. Robbins proposed to give a preference of \$500 to True & Greene, to which Mr. Keyes and Mr. Ellis assented; and that even when the proposals of True & Greene were demonstrated to be \$1000 higher than those of Dutton & Wentworth, Keyes and Ellis manifested "a strong reluctance" to reject those of the former. On the trial, Mr. Palfray testified as follows:

"A gentleman of the Committee said, that he should not be willing to change the printers unless the Commonwealth would make a saving of \$500 by the change. That gentleman was Mr. Robbins. He proposed it; he said that he for one should not be willing to have a change made, unless the difference in favor of the Commonwealth would be more than \$500; upon which Mr. Keyes said,—"*Nor should I*"—There was no other remark except that Mr. Perkins said that that would be against the very principle of the order.

We now subjoin other testimony corroborative of this:

"*John Thomas, Esq.* About the first of April last on a Thursday, Mr. Robbins [a member of the Committee of Accounts] called at my office in Plymouth to borrow the Massachusetts Journal, containing the article about the Committee of Accounts. I had a conversation with him at that time relative to the alleged libel on Mr. Keyes. I asked him whether it was a fact that Mr. Keyes did wish to give a preference to True & Greene, and whether the statement in that paper were true. He said that there was a wish in the Committee, and on the part of Mr. Keyes, to give a preference of \$500 or thereabouts to that firm. I asked him again if Mr. Keyes did wish to give a preference of \$500 to True & Greene. He said he did, or about that sum, he could not say whether it was not a little more or a little less. I remember it distinctly, because it struck me with great surprise from the proportion it bore to what I supposed to be the whole amount of the work. I did not suppose at that time that the whole State Printing amounted to more than 10 or 1200 dollars a year."

"*Allen Danforth*, read the article containing the supposed libel:—read on until he came to what was said about the \$500,



and then asked Mr. Robbins if it was true. Mr. Robbins replied that he was in favor of a preference, but he did not know whether it was more or less than that sum. Witness asked him if Mr. Keyes was in favor of it, Mr. Robbins replied that Mr. Keyes did assent to it."

*Charles H. Warren* and *J. H. Loud, Esqrs.* testified to the same effect.

We now add all the evidence on the other side.

Hon. Mr. Ellis was one of the committee of accounts.

"*Solicitor General.* Did you ever hear of such a proposition as that of giving a preference of \$500 to True & Greene?"

"*Witness.* Never, no how. Mr. Keyes then said, 'we adopt Dutton & Wentworth.' I am sure he used the word 'we,' I thought we were unanimous. The question was not put to me; but I thought it was understood that we were unanimous."

Hon. Josiah Robbins, another member examined.

"I never heard a proposition to give \$500 or any other particular sum to one printer more than another. It was suggested and I don't know but by myself that we should give a preference to True & Greene. I said perhaps the Committee would be justified in giving a preference to one printer more than another if they had more confidence in him. I don't know that any particular sum was named. It might have been \$500 or perhaps \$1000.

"*Cross Examined.* I never heard a proposition to give \$500 preference to True & Greene. The Committee unanimously assented though there was no vote. The ground of preference for True & Greene in the outset was their responsibility and fidelity. I might have said something myself about a preference to the amount of \$500, but not as I recollect."

Mr. Keyes himself:

"I never proposed to give them [True & Greene] a preference of \$500, at or before or after the time specified, and I never heard such a proposition made by any other person at any time."

"The only question now is; 'Is the publication true or false?'" for if true, malice would be negated.

Mr. Palfray, a member of the committee of accounts, a printer, to whom was entrusted, by his colleagues, the particular examination of the contract for printing, a man of highly respectable character, unblemished both in public and private life, swears, affirmatively and positively, that Mr. Keyes *was* in favor of a preference to True & Greene of \$500. This very expression of preference was communicated by Mr. Palfray, the day after he heard it, to a gentleman of Salem. Here is a witness beyond imputation.

To confirm the fact as stated, that a preference had been

manifested, is the testimony of Messrs. *Thomas, Danforth, Warren* and *Loud*. That declares that Mr. *Robbins* avowed it.

What appears in opposition?

Mr. *Keyes* the complainant, the aggrieved party, smarting under the lash that had been applied to him, and naturally inflamed against the respondent, says, he is not chargeable with making a proposition for a preference, nor aware that any such was made by any body. Mr. *Keyes* may have forgotten the circumstance.

By whom is he corroborated? By Mr. *Robbins*? That gentleman evidently wavers in his testimony. He first never hears of any proposition to give a preference of \$500 to any printer; and afterwards thinks he might have said "something about a preference to the amount of \$500."

By Mr. *Ellis*, the "no how" man? That honorable gentleman had better have been "any where" than in the Court he was, at the time he gave in his testimony.

But another witness we overlooked, who will come in here very well.

*Benj. Perkins*, Esq. called in behalf of the prosecution, testifies as follows:

"After Mr. *Keyes* came back, some one said that the competition would be between *True & Greene* and *Dutton & Wentworth*. Mr. *Keyes* put his finger on this, and this, and this item, and said they were lower in *True & Greene's*.—There was a proposition from some one, to give \$500 in preference to *True & Greene*. Mr. *Robbins* was the one that made it."

Does it not appear from the evidence of this gentleman that the proposition was made in presence of Mr. *Keyes*? Then take this testimony, with *Robbins'* sworn declarations to Mr. *Thomas* and Mr. *Danforth*; and the inference is irresistible that the proposition was made and that Mr. *Keyes* assented to it.

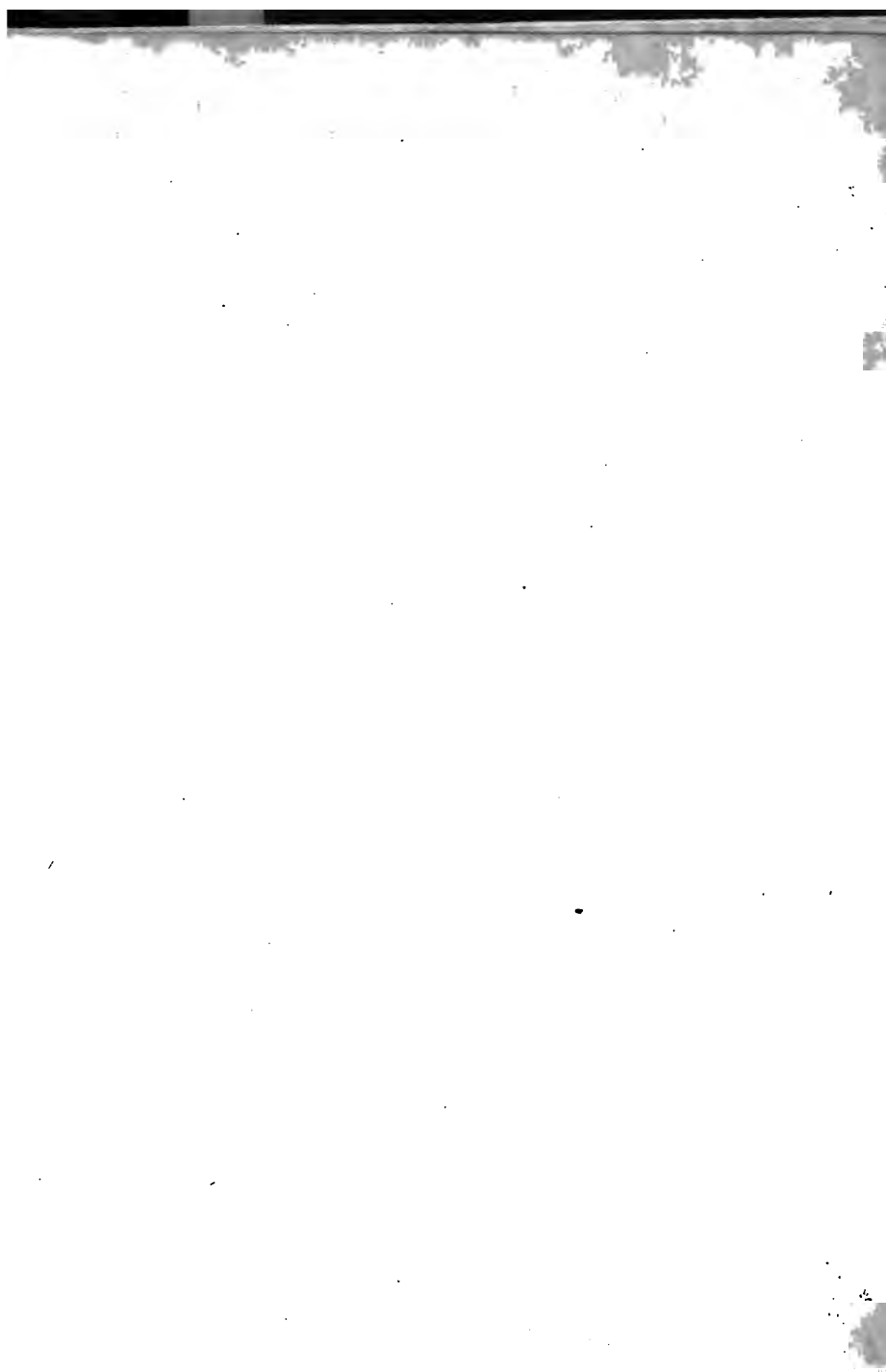
This once proved, and Mr. *Child's* defence is complete.—The charge was substantially that Mr. *Keyes* favored the design of giving a bounty of \$500 to *True & Greene*; and this charge, we think, every man of common discernment, will say, *has been established*.

So far we have proceeded on the well established fact that the publication was true; but supposing it not to have been true, the evidence in the case, even under that, the worst, supposition, completely rebuts any presumption of malice. Mr. *Child* received his information directly from a gentleman of the committee of accounts, of unblemished reputation, who, from his position in the committee, it being his duty particularly to examine the proposals for printing, would naturally and even inevitably, be attentive to all the circumstances attending the negotiation on a matter virtually committed to his decision. The circumstance, charged in Mr. *Child's* publication, was communi-

cated to him in a way that could leave no doubt of its substantial truth. Mr. Child had also heard, as others had, that suspicions were afloat of some unfair dealing, by which True & Greene were enabled to secure the State printing. The time of the publication was previous to an election, in which Mr. Keyes laid pretensions to an office of great trust and honor; it was the time and the only time, for Mr. Child to bring forward his charge, if he knew of any. It is the duty of every good citizen; it is the duty more particularly of every editor of a political journal, as it will always be the disposition of every honest man in that responsible station, to expose, to the people and especially to the immediate electors, before whom a candidate presents himself, any politically criminal or other reprehensible conduct, of which he has the best of grounds for believing such a candidate to be guilty. For such honesty, boldness and independence, a man deserves not death nor bonds, but the countenance and applause of his fellow citizens; he "deserves a palace, rather than a prison." In the present case, the circumstances impress us with the clear conviction, that the Judge in the trial, ought to have instructed the jury, that the evidence negatived the inference of a criminal intent; he ought to have told them that the publication appeared to have been made "from good motives, and for justifiable ends." We do not believe that the Judge was insensibly, much less wilfully, biased by his predilections, he being a Jackson man, for the friends of a "reprobate Jackson print;" if we do not mistake his character, he is far too honest and imprejudicable for such a course; but we look upon his omission so to instruct the jury, as one of those errors of judgment, to which the best of men are liable. The circumstance is nevertheless to be regretted, inasmuch as such a verdict, as ensued, is liable to discourage honest men from exposing any political profligacy which may come to their knowledge.

A certain thing, in this trial, rather deserving of mention in this connexion, is the miserable appearance exhibited by Messrs. Ellis & Robbins; two gentlemen, candidates at the election just passed for the State Senate, and mayhap elected thereto. Ellis appears to be a low, stupid, raw creature, ignorant of the duties of a citizen, much more of a legislator. Robbins has apparently a little more sense and intelligence.—Both however are seemingly not the men of which Massachusetts should descend to manufacture her legislators.

Mr. Child, himself is the Editor of a political journal; which is surpassed by none for its manly, bold and fearless intrepidity. He has done, and is doing the State no small service; and the people ought to know it. For his honest and untiring efforts to disabuse the Electors of Middlesex, he deserves their thanks; and for the uprightness and independence, visible in all his exertions, he will, not only merit, but receive the applause of the whole body of the good and true throughout the State.







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